

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

**RECEIVED**

AUG 10 1998

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Request by Bell Atlantic for	)	CC Docket No. 98-11
Interim Relief Under Section 706, or,	)	File No. NSD-L-98-99
in the alternative, a LATA	)	
Boundary Modification	)	

**COMMENTS OF WORLDCOM, INC.**

**I. INTRODUCTION**

On July 28, 1998 the Commission issued a Public Notice<sup>1</sup> seeking comment on the "Emergency Request of Bell Atlantic-West Virginia For Interim Relief" ("Petition") filed with the Commission by Bell Atlantic-West Virginia ("Bell Atlantic")<sup>2</sup> on July 22, 1998. In its petition, after alleging a scarcity of high-speed interLATA facilities available from existing providers, Bell Atlantic requests that the Commission either use Section 706(a) of the Telecommunications Act of 1996 to grant Bell Atlantic the authority to construct interLATA facilities into and out of West Virginia to provide high-speed data services, or, in the alternative, modify the existing LATA boundaries for the limited purpose of allowing

---

<sup>1</sup> Public Notice, DA 98-1506, NSD-L-98-99, "Request by Bell Atlantic-West Virginia for Interim Relief under Section 706, or, in the Alternative, a LATA Boundary Modification" (released July 28, 1998)("Notice").

<sup>2</sup> WorldCom uses the term "Bell Atlantic" to describe Bell Atlantic-West Virginia, Bell Atlantic Internet Solutions, and ICON, Bell Atlantic's purportedly independent interLATA Global Service Provider ("GSP").

*Oh*

Bell Atlantic to provide dedicated high capacity computer-to-computer links over the current LATA boundaries. In response to Bell Atlantic's petition, WorldCom, Inc. ("WorldCom") files these comments urging the Commission to deny Bell Atlantic's petition. WorldCom believes that Bell Atlantic's factual allegations are seriously exaggerated and further believes that the Commission does not have the legal authority to grant the requested relief.

**II. THE COMMISSION SHOULD DENY BELL ATLANTIC'S PETITION  
BECAUSE BELL ATLANTIC HAS SIGNIFICANTLY OVERSTATED ITS  
CLAIM THAT HIGH-CAPACITY INTERLATA FACILITIES ARE  
UNAVAILABLE IN WEST VIRGINIA**

WorldCom does not agree with Bell Atlantic's assertion that there is an acute shortage of high-capacity interLATA facilities available in West Virginia. Leaving aside for the moment questions regarding the Commission's legal authority, for the Commission to grant Bell Atlantic's petition for extraordinary relief -- relief that undercuts the core of the Telecommunications Act of 1996 -- Bell Atlantic must make a compelling showing that such relief is necessary. Bell Atlantic's petition concedes that Bell Atlantic has been able to secure the capacity it needs in the Charleston, West Virginia LATA. It is with respect to West Virginia's Clarksburg LATA (serving Morgantown) that Bell Atlantic claims it has been unable to secure a high-capacity interLATA circuit to meet its contractual obligation to the West Virginia Network for Education Telecomputing ("WVNET"). WorldCom's recent experience with respect to obtaining high-speed capacity into the Clarksburg LATA is quite different than Bell Atlantic's and underscores why Bell Atlantic should not be granted the relief it has requested.

**a. WorldCom Has Been Able to Obtain High-Speed InterLATA Capacity into the Clarksburg LATA; In Contrast, WorldCom Has Been Unable to Obtain Necessary High-Speed Special Access Circuits from Bell Atlantic**

WorldCom is a worldwide provider of telecommunications and Internet services. In the United States, WorldCom provides long-distance telecommunications services using its nationwide fiber optic network, provides local telecommunications services in over 80 markets using local fiber optic networks, and, through its UUNET subsidiary, provides Internet access and backbone services across the country and around the world.

Even though it owns and operates a nationwide fiber optic network, WorldCom does not own or operate any of its own telecommunications facilities terminating in West Virginia. Instead, like many other carriers, WorldCom leases the capacity necessary to serve its customers in West Virginia from other providers which own and operate either fiber optic networks or digital microwave networks. In general, WorldCom does not build its own long distance facilities unless the cost of constructing and operating its own facilities is less than the cost of leasing capacity from other providers. This is purely a matter of rational economics. To date in West Virginia, WorldCom has been able to lease sufficient facilities at a reasonable cost to enable it to meet its customer demand.

One of WorldCom's current customers in West Virginia is the WVNET, which leases a DS-3 high-capacity connection from WorldCom and purchases Internet access from WorldCom's subsidiary, UUNET. WorldCom currently leases digital microwave capacity from another provider to connect WVNET's original single Internet Access Point ("IAP") in Morgantown to the Internet. In January of 1998, WVNET selected Bell Atlantic Internet Solutions to replace WorldCom and UUNET in a new dual IAP configuration.

In about the same time frame, WorldCom was forced to seek alternative DS-3 capacity to provide its service to WVNET because the provider of WorldCom's leased circuit was in the process of selling its digital microwave system. WorldCom began contacting other vendors to secure the capacity it needed to continue providing service to WVNET.

On February 12, 1998, WorldCom placed an order with AT&T for a baseline DS-3<sup>3</sup> between Pittsburgh, Pennsylvania, and Morgantown, West Virginia. On February 23, 1998, AT&T notified WorldCom that it had the baseline capacity available and confirmed WorldCom's order.

On March 2, 1998, WorldCom ordered a DS-3 special access circuit from Bell Atlantic to provide the necessary capacity between the AT&T POP serving Morgantown and WVNET's IAP. As of this filing, more than five months after WorldCom's order was submitted to Bell Atlantic, Bell Atlantic has not provided WorldCom with that special access circuit. Because of Bell Atlantic's failure to provide the special access needed by WorldCom to connect to WVNET's IAP, WorldCom is continuing to serve WVNET over the leased digital microwave facility.

Two points are critical here. First, at approximately the same time that Bell Atlantic alleges that it could not obtain high-speed interLATA capacity between Pittsburgh and Morgantown from any interexchange carrier, WorldCom was able to order and obtain

---

<sup>3</sup> A baseline DS-3 is a circuit that encompasses just the interexchange provider's portion of the circuit and does not include the exchange access portion at either end. When ordering baseline interexchange capacity, WorldCom arranges and pays for exchange access directly from a local exchange carrier. This contrasts with a total service DS-3, where AT&T would have acted as WorldCom's agent with the local exchange carriers at either end of the circuit.

similar high-speed capacity from AT&T with little difficulty.<sup>4</sup> This suggests that Bell Atlantic, or its GSP, ICON, did not look very hard for the capacity it was seeking.

Second, although WorldCom was able to get the interLATA capacity it needed from AT&T, WorldCom was stymied when it got into West Virginia because Bell Atlantic could not -- or would not -- provide the necessary intraLATA capacity. WorldCom's difficulty is precisely the opposite of the problems alleged by Bell Atlantic. WorldCom was able to secure interLATA high-capacity facilities from a competing interexchange carrier; it could not get the necessary intraLATA high-capacity special access from the incumbent LEC, Bell Atlantic. This suggests that Bell Atlantic should first address capacity issues in West Virginia's intraLATA markets, where it is the monopoly provider, before it attempts to circumvent the interLATA restrictions of the Telecommunications Act of 1996.

Borrowing Bell Atlantic's analogy<sup>5</sup> and turning it around to more appropriately describe WorldCom's experience in this instance: WorldCom was able to get a six-lane superhighway from Pittsburgh into West Virginia but ran into a brick wall when it turned onto Bell Atlantic's exit ramp into Morgantown.

---

<sup>4</sup> It should be noted that WorldCom and AT&T are fierce competitors in the telecommunications market. In this circumstance, AT&T's provision of capacity to WorldCom certainly would not signal any undue favoritism toward WorldCom; rather it indicates that AT&T had capacity on its network that it was willing to sell to a paying customer in order to earn revenue.

<sup>5</sup> Petition at 9.

**b. Additional InterLATA Capacity is Now Becoming Available To and From the Clarksburg LATA**

Beyond the capacity that WorldCom knows from recent experience that AT&T has serving Morgantown, WorldCom is aware that significant additional capacity is about to become available in the Clarksburg LATA. In a project that Bell Atlantic alludes to in its Petition<sup>6</sup> and of which Bell Atlantic is well aware, WorldCom has been working with, to use Bell Atlantic's term, a "cable company" to provide a fiber optic link between Pittsburgh and Morgantown. That cable company is the Helicon Group, L.P. ("Helicon") which is exploring the entrepreneurial telecommunications opportunities opened to it, and other cable companies, by the Telecommunications Act of 1996.

Helicon, using fiber optic cable deployed by its cable affiliates and by other cable companies along with some additional construction, has completed a fiber optic link between Pittsburgh and Morgantown. WorldCom understands that this fiber optic cable will eventually continue through Morgantown into Clarksburg, but, until Helicon completes the Morgantown to Clarksburg segment, Helicon will rely on Bell Atlantic special access to reach Clarksburg. At the Pittsburgh end, Helicon has established collocation at a WorldCom point-of-presence where users of the Helicon fiber will be able to connect with the WorldCom network, the Internet, or other carriers. The Helicon fiber will initially operate at an OC-12 capacity (12 DS-3s) but has the capacity to expand to OC-48 (48 DS-3s) using currently available electronics. The Helicon fiber optic cable was undergoing testing last

---

<sup>6</sup> Petition at 4.

week and, assuming the testing is satisfactory, is scheduled to begin service this week (the week of August 10, 1998).

WorldCom has secured multiple DS-3 capacity on this Helicon fiber into the Clarksburg LATA. WorldCom had planned to resell one of these DS-3s to ICON to fill Bell Atlantic's capacity requirement. However, on August 6, 1998, ICON cancelled its order with WorldCom.<sup>7</sup> Nevertheless, the availability of high-speed interLATA capacity over the Helicon fiber-optic cable (and apparently from other sources as well) renders moot Bell Atlantic's immediate concern regarding its contractual commitment to WVNET. In addition, it should allay any fears expressed by West Virginia officials that West Virginia may be becoming a "digital island."

Thus, the Commission should deny Bell Atlantic's petition because Bell Atlantic has failed to prove that the extraordinary relief that it has requested is necessary or warranted.

### **III. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO GRANT THE RELIEF THAT BELL ATLANTIC IS SEEKING**

Even if Bell Atlantic were able to demonstrate that there was a lack of interLATA facilities into and out of West Virginia, the Commission does not have the authority to grant the relief that Bell Atlantic has requested. Bell Atlantic has asked the Commission to use Section 706(a) of the Telecommunications Act of 1996 to forbear from

---

<sup>7</sup> Since Bell Atlantic's Petition alleges that it urgently needs high-speed capacity between Pittsburgh and Morgantown, WorldCom can only conclude that Bell Atlantic and/or ICON was able to obtain the needed capacity from another vendor. If this is true, the availability of this additional capacity further undercuts Bell Atlantic's rhetoric about West Virginia becoming a digital island.

enforcing the Act's Section 271 interLATA restriction so that Bell Atlantic can provide high-speed bandwidth across LATA boundaries or, in the alternative, to use its authority to modify the LATA boundaries for the limited purpose of allowing Bell Atlantic to operate dedicated high capacity computer-to-computer links over West Virginia's LATA boundaries.

The Commission has already addressed the first alternative relief requested by Bell Atlantic. On August 6, 1998, the Commission adopted an order in which it concluded that Section 706 does not give the Commission the statutory authority to forbear from sections 251 and 271 of the Act until the requirements of those sections have been fully implemented.<sup>8</sup> Therefore, the Commission cannot grant Bell Atlantic its requested relief pursuant to Section 706(a).

With respect to modifying the LATA boundaries so that Bell Atlantic can provide high-speed data services across West Virginia's existing LATA boundaries, WorldCom observes that the Commission has raised this issue in the context of a Notice of Proposed Rulemaking adopted on August 6, 1998.<sup>9</sup> WorldCom believes that a general rulemaking, rather than this Petition, is the proper context in which to address such an issue, particularly where, as here, the facts do not indicate that relief is necessary.

Although WorldCom will reserve the bulk of its analysis of this issue for the rulemaking, WorldCom does not believe that Congress contemplated multiple sets of LATA boundaries: one set for data services and another set for voice services. As the Commission

---

<sup>8</sup> Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, Memorandum Opinion & Order & Notice of Proposed Rulemaking, FCC 98-188, adopted August 6, 1998 at ¶77.

<sup>9</sup> See id. at ¶190.



has previously determined, the interLATA restriction imposed upon the Regional Bell Operating Companies by Section 271 of the Act apply with equal force to voice and data services.<sup>10</sup> Although Section 3(25)(B) of the Act provides that BOCs may, with the approval of the Commission, modify LATA boundaries, it does not appear to permit the kind of service-specific, outright elimination of LATA boundaries that Bell Atlantic is seeking.

The Commission should deny Bell Atlantic's petition because the Commission does not have the authority to grant the requested relief.

#### **IV. BELL ATLANTIC HOLDS THE KEYS TO ITS PROVISION OF INTERLATA SERVICES, INCLUDING HIGH-SPEED DATA SERVICES**

It should also be observed that Bell Atlantic controls when it will be given the right to provide, not just high-speed interLATA data services, but all interLATA services. The Telecommunications Act of 1996 gives Bell Atlantic the right to provide interLATA services once it has complied with the market-opening requirements of Sections 251 and 271. In the two and one half years since the passage of the Telecommunications Act of 1996, Bell Atlantic has chosen not to do so.

Despite all of the expressions of concern for West Virginia put forth in its Petition, however, Bell Atlantic apparently does not place gaining Section 271 interLATA authority in West Virginia high on its list of priorities. In a recent teleconference, James Young, Bell Atlantic's Executive Vice President and General Counsel, told Wall Street analysts that Bell Atlantic's "N.Y., Pa. and Mass. [271] applications have highest priority,

---

<sup>10</sup> Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, Final Report and Further Notice of Proposed Rulemaking, 11 FCCC Rcd 21905 (1996), at ¶121-122.

then N.J. and the rest of New England, followed by Va. and Md., with Del., D.C., and W. Va. last."<sup>11</sup> It is Bell Atlantic that appears content to address West Virginia last, and that seems intent on maintaining the bricked-up entry and exit ramps in West Virginia.


Rather than trying to circumvent Section 271 as it is attempting with its Petition here, Bell Atlantic should spend its energy on satisfying Section 271 in the manner intended by Congress. If it is truly concerned about an interLATA famine in West Virginia, it can place more emphasis on gaining Section 271 approval there.

## V. CONCLUSION

For the reasons stated above, WorldCom urges the Commission to deny Bell Atlantic's petition.

Respectfully submitted,

August 10, 1998




Catherine R. Sloan  
Richard L. Fruchterman, III  
Richard S. Whitt  
WorldCom, Inc.  
1120 Connecticut Ave., N.W.  
Suite 400  
Washington, D.C. 20036  
202/776-1550

---

<sup>11</sup> "Bell Atlantic and GTE Outline Sec. 271 and 706 Plans in Merger," Communications Daily, vol. 18, no. 148, August 3, 1998, at 2 (emphasis added).

**CERTIFICATE OF SERVICE**

I, Cecelia Y. Johnson, hereby certify that on this 10th day of August, 1998, true copies of the foregoing "COMMENTS OF WORLDCOM, INC." were delivered to each of the parties listed below by first class mail unless otherwise indicated.

  
Cecelia Y. Johnson

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554  
(hand delivered original and six copies)

Mr. Al McCloud  
Network Service Division  
Common Carrier Bureau  
Room 235  
2000 M Street, N.W.  
Washington, D.C. 20554  
(hand delivered two copies)

International Transcription Service  
1231 20th Street, N.W.  
Washington, D.C. 20036  
(hand delivered)